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10/635,292

08/06/2003

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EXAMINER

BOVEJA, NAMRATA

ART UNIT

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3622

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/635,292	<b>Applicant(s)</b> BRICE ET AL.	
	<b>Examiner</b> Namrata Boveja	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/28/04 and 02/2/06</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This office action is in response to communication filed on 08/06/2003.
2. Claims 1-38 are presented for examination.

#### **Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 12 and 30 are rejected under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter.

The claimed invention taken as a whole is directed to a mere computer program (an offer generating module), i.e., to only its description or expression. The claim is descriptive material per se and hence non-statutory. A computer program/software (an offer generating module) is merely a set of instructions capable of being executed by a computer; the computer program (an offer generating module) itself is not a process. A claim for a computer program/software (an offer generating module), without the computer-readable medium needed to realize the computer program's functionality, is non-statutory functional descriptive material. Furthermore, "an offer generating module" and "a processing element" are neither physical "things" nor statutory processes, as they are not "acts" being performed. Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. See MPEP §2106 IV. B. 1. (a). If the Applicant is trying to claim software embedded in a computer medium, then the Applicant needs to clearly claim these features and point

to the specification to support this claim. Appropriate correction is required.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 11-17, 19-25, 27, 28, 30-35, 37, and 38 are rejected under 102(b) as being anticipated by Herz (Patent Number 6,029,195 hereinafter Herz).

In reference to claim 1, Herz teaches a method for providing purchase offers, comprising: receiving, from a user, a purchase request including purchase profile information (col. 2 lines 18-27, col. 6 lines 43-58, col. 62 lines 36-67, and col. 63 lines 1-23); determining a set of purchase options based on the purchase profile information (col. 1 lines 27-34, col. 9 lines 43-67, col. 10 lines 1-52, and col. 63 lines 24-43); determining a point value for each purchase option based on characteristics associated with the respective purchase option (col. 15-18 and col. 63 lines 44-67); and providing one or more purchase offers associated with respective purchase options based upon the point values for the purchase options and further based upon a marketing criterion of at least one of a supplier that provides the purchase option and a seller that provides the one or more purchase offers (col. 5 lines 6-20, col. 17 lines 58-67, col. 18 lines 1-8, and col. 64 lines 1 to col. 65 lines 48).

5. In reference to claims 2, 21, and 31, Herz teaches the method wherein providing one or more purchase offers comprises limiting the purchase offers from a respective

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supplier based upon the marketing criteria of the supplier and the seller (col. 5 lines 61 to col. 6 lines 15, col. 8 lines 3-21, and col. 17 lines 58 to col. 18 lines 8).

6. In reference to claims 3, 22, and 32, Herz teaches the method wherein providing one or more purchase offers comprises presenting the purchase offers to the user in accordance with the marketing criteria of the supplier and the seller (col. 5 lines 61 to col. 6 lines 15, col. 8 lines 3-21, and col. 17 lines 58 to col. 18 lines 8).

7. In reference to claim 4, Herz teaches the method further comprising: monitoring purchase transactions associated with a type of purchase option offered by a supplier (col. 65 lines 49-67); and adjusting the provision of purchase offers for the type of purchase option offered by the supplier based on the monitoring (col. 66 lines 1-64 and col. 70 lines 18-36).

8. In reference to claim 5, Herz teaches the method, wherein adjusting the provision of purchase offers includes: adjusting a number of times the type of purchase option offered by the supplier is included in a document that presents the purchase offers based on the monitoring (col. 70 lines 37 to col. 71 lines 18).

9. In reference to claim 6, Herz teaches the method, wherein adjusting the provision of purchase offers includes: adjusting a location of a purchase offer associated with the type of purchase option offered by a supplier in a document that presents the purchase offers based on the monitoring (col. 70 lines 37 to col. 71 lines 18).

10. In reference to claim 7, Herz teaches the method, wherein adjusting the provision of purchase offers includes: adjusting a format of a purchase offer associated with the

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type of purchase option offered by a supplier in a document that presents the purchase offers based on the monitoring (col. 72 lines 27-63).

11. In reference to claim 11, Herz teaches the method further comprising constructing a plurality of data structures with each data structure containing no more than a predefined number of purchase options for a respective supplier, and wherein providing one or more purchase offers comprises providing one or more purchase offers from among the purchase options contained within the plurality of data structures (col. 5 lines 6-20, col. 17 lines 59-67, and col. 18 lines 1-8).

12. In reference to claim 12, Herz teaches an offer generating module for providing purchase offers comprising: a processing element adapted to receive, from a user, a purchase request including purchase profile information, said processing element also adapted to determine a set of purchase options based on the purchase profile information, said processing element further adapted to determine a point value for each purchase option based on characteristics associated with the respective purchase option, and said processing element additionally adapted to provide one or more purchase offers associated with respective purchase options based upon the point values for the purchase options and further based upon a marketing criterion of at least one of a supplier that provides the purchase option and a seller that provides the one or more purchase offers (col. 1 lines 18-34, col. 5 lines 6-20, col. 5 lines 61 to col. 6 lines 15, col. 6 lines 43-58, col. 8 lines 3-21, col. 9 lines 43 to col. 10 lines 52, col. 15 lines 35 to col. 18 lines 8, col. 62 lines 36 to col. 63 lines 43, and col. 64 lines 1 to col. 65 lines 48) .

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13. In reference to claim 13, Herz teaches the offer generating module wherein said processing element is further capable of limiting the purchase offers from a respective supplier based upon the marketing criteria of the supplier and the seller (col. 5 lines 61 to col. 6 lines 15, col. 8 lines 3-21, and col. 17 lines 58 to col. 18 lines 8).

14. In reference to claim 14, Herz teaches the offer generating module wherein said processing element is further capable of presenting the purchase offers to the user in accordance with the marketing criteria of the supplier and the seller (col. 5 lines 61 to col. 6 lines 15, col. 8 lines 3-21, and col. 17 lines 58 to col. 18 lines 8).

15. In reference to claims 15, 23, and 33, Herz teaches the offer generating module wherein said processing element is further capable of presenting the purchase offers provided by a respective supplier in a location relative to the purchase offers provided by other suppliers that is based upon the marketing criteria of the supplier and the seller (col. 77 lines 16-67).

16. In reference to claims 16, 24, and 34, Herz teaches the offer generating module wherein said processing element is further capable of presenting the purchase offers provided by a respective supplier in a format relative to the purchase offers provided by other suppliers that is based upon the marketing criteria of the supplier and the seller (col. 77 lines 16-67).

17. In reference to claims 17, 25, and 35, Herz teaches the offer generating module wherein said processing element is further capable of monitoring purchase transactions and adjusting the provision of purchase offers based upon the purchase transactions (col. 66 lines 1-64 and col. 70 lines 18-36).

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18. In reference to claims 19 and 37, Herz teaches the offer generating module wherein said processing element is further capable of constructing a plurality of data structures with each data structure containing no more than a predefined number of purchase options for a respective supplier, and wherein said processing element provides at least one purchase offer from among the purchase options contained within the plurality of data structures (col. 5 lines 6-20, col. 17 lines 59-67, and col. 18 lines 1-8).

19. In reference to claim 27, Herz teaches the method further comprising constructing a plurality of data structures with each data structure containing no more than a predefined number of purchase options for a respective supplier, and wherein providing at least one purchase offer comprises providing at least one purchase offer from among the purchase options contained within the plurality of data structures (col. 5 lines 6-20, col. 17 lines 59-67, and col. 18 lines 1-8).

20. In reference to claim 28, Herz teaches the method wherein identifying a set of purchase options comprises selecting at least one database of purchase options based upon at least one of the user and the purchase profile information, and subsequently searching the selected database to identify the set of purchase options (col. 67 lines 54-57).

21. In reference to claim 38, Herz teaches the offer generating module wherein said processing element is capable of identifying the set of purchase options by selecting at least one database of purchase options based upon at least one of the user and the



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purchase profile information, and by subsequently searching the selected database to identify the set of purchase options (col. 67 lines 54-57).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 8-10, 18, 26, and 36 are rejected under U.S.C. 103(a) as being unpatentable over Herz in view of the article titled "Frustrated Fliers Say Fair Fare A Gamble," by Susan Glaser, The Plain Dealer, June 5, 2000, pg. 1.A. (hereinafter Glaser).

In reference to claim 8, Herz teaches the method of providing purchase offers (col. 5 lines 6-20, col. 17 lines 58-67, col. 18 lines 1-8, col. 64 lines 1-67, and col. 65 lines 1-48) and determining a point value for each purchase option (col. 15-18 and col. 63 lines 44-67). Herz does not teach determining an initial value for each purchase option, and assessing a penalty for at least some purchase options based upon at least one of variations between the purchase profile information and the respective purchase option and availability of the respective purchase option. Glaser teaches determining an initial point value for each purchase option, and assessing a penalty for at least some purchase options based upon at least one of variations between the purchase profile information and the respective purchase option and availability of the respective

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purchase option (see at least page 1 paragraph 4, page 2 paragraph 25, and page 3 paragraphs 26 and 27). It would have been obvious to employ in Herz's method of providing purchasing offers the penalty assessment as taught by Glaser, since this would lead to providing more targeted purchasing options to the customers and would allow the customers to choose the appropriate product or service based on multiple types of criteria such as scheduling, pricing, inventory, and connections simultaneously.

23. In reference to claim 9, Herz teaches determining a point value for each purchase option (col. 15-18 and col. 63 lines 44-67). Herz teaches the method wherein the purchase option is for purchasable items, published articles, and offers of insurance policies (col. 6 lines 22-30 and col. 10 lines 27-28). Herz does specifically teach the method wherein the purchase option is a flight option, and wherein determining a value for each purchase option includes: determining a value for the flight option, assessing a penalty to the point value based on at least one of: i) a departure displacement time for the flight option compared to a requested departure time included in the purchase request, ii) a connection service type associated with the flight option, and iii) an inventory class status associated with the flight option. Glaser teaches the method wherein the purchase option is a flight option, and wherein determining a value for each purchase option includes: determining a value for the flight option, assessing a penalty to the point value based on at least one of: i) a departure displacement time for the flight option compared to a requested departure time included in the purchase request (page 2 paragraph 25 and page 3 paragraph 26), ii) a connection service type associated with the flight option (page 3 paragraph 27), and iii) an inventory class status associated with

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the flight option. It would have been obvious to employ in Herz's method of providing purchasing offers the options relating to purchasing flights as taught by Glaser, since flight tickets are a type of product that a user purchases online similar to newspaper articles and insurance policies as taught by Herz.

24. In reference to claim 10, Herz teaches the method wherein the purchase request comprises profile information (col. 1 lines 18-27, col. 6 lines 43-58, col. 62 lines 36-67, and col. 63 lines 1-23). Herz also teaches the method wherein the purchase option is for purchasable items, published articles, and offers of insurance policies (col. 6 lines 22-30 and col. 10 lines 27-28). Herz does not teach the method wherein the purchase request comprises a travel request including travel profile information, further comprising: identifying a plurality of candidate schedules based upon the travel request; determining availability of the plurality of candidate schedules; determining a price of at least those candidate schedules that are available, and wherein the value for each purchase option is determined for each of the candidate schedules that are available. Glaser teaches the method wherein the purchase request comprises a travel request including travel profile information, further comprising: identifying a plurality of candidate schedules based upon the travel request (page 2 paragraph 15); determining availability of the plurality of candidate schedules (page 2 paragraph 14); determining a price of at least those candidate schedules that are available (page 2 paragraphs 15 and 25 and page 3 paragraph 27), and wherein the value for each purchase option is determined for each of the candidate schedules that are available (page 2 paragraphs 15 and 25 and page 3 paragraph 27). It would have been obvious to employ in Herz's method of

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providing purchasing offers the options relating to purchasing flights as taught by Glaser, since flight tickets are a type of product that a user purchases online similar to newspaper articles and insurance policies as taught by Herz, and a user would want to compare ticket prices before carrying out his purchase just like he would want to compare insurance policy offers before locking into a given policy.

25. In reference to claims 18, 26, and 36, Herz teaches determining a point value for each purchase option (col. 15-18 and col. 63 lines 44-67). Herz does not teach the determining a value for each purchase option by determining an initial value for each purchase option, and by assessing a penalty for at least some purchase options based upon at least one of variations between the purchase profile information and the respective purchase option and availability of the respective purchase option. Glaser teaches the determining a value for each purchase option by determining an initial value for each purchase option, and by assessing a penalty for at least some purchase options based upon at least one of variations between the purchase profile information and the respective purchase option and availability of the respective purchase option (page 2 paragraphs 15 and 22). It would have been obvious to employ in Herz's method of providing purchasing offers the options relating to purchasing flights as taught by Glaser, since flight tickets are a type of product that a user purchases online similar to newspaper articles and insurance policies as taught by Herz, and a user would want to compare ticket prices before carrying out his purchase just like he would want to compare insurance policy offers before locking into a given policy.

26. Claim 29 is rejected under U.S.C. 103(a) as being unpatentable over Herz in view of Glaser and further in view of Official Notice.

In reference to claim 29, Herz teaches the method wherein the purchase request comprises profile information (col. 1 lines 18-27, col. 6 lines 43-58, col. 62 lines 36-67, and col. 63 lines 1-23). Herz teaches the method wherein the purchase option is for purchasable items, published articles, and offers of insurance policies (col. 6 lines 22-30 and col. 10 lines 27-28). Herz does not teach the method wherein the purchase request comprises a travel request including travel profile information, further comprising: identifying a plurality of candidate schedules based upon the travel request; determining availability of the plurality of candidate schedules; determining a price of at least those candidate schedules that are available, and wherein the value for each purchase option is determined for each of the candidate schedules that are available. Glaser teaches the method wherein the purchase request comprises a travel request including travel profile information, further comprising: identifying a plurality of candidate schedules based upon the travel request (page 2 paragraph 15); determining availability of the plurality of candidate schedules (page 2 paragraph 14); determining a price of at least those candidate schedules that are available (page 2 paragraphs 15 and 25 and page 3 paragraph 27), and wherein the value for each purchase option is determined for each of the candidate schedules that are available (page 2 paragraphs 15 and 25 and page 3 paragraph 27). It would have been obvious to employ in Herz's method of providing purchasing offers the options relating to purchasing flights as taught by Glaser, since flight tickets are a type of product that a user purchases online similar to newspaper

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articles and insurance policies as taught by Herz, and a user would want to compare ticket prices before carrying out his purchase just like he would want to compare insurance policy offers before locking into a given policy.

Herz also does not teach scoring the purchasing options. Official Notice is taken that it is old and well known to score purchasing options for example when a user wishes to purchase a specific new textbook and the online bookstore while first displays the advertisement for the new book, it may also below that listing show the listing for a used book or it may show just that used book if it does not have a new one available based on how the listings are scored to match with the query typed in by the user. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to use a score in association with listing provided by Herz to enable the user to first view articles that are most targeted to the user and therefore most desirable to the user.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Namrata (Pinky) Boveja whose telephone number is 571-272-8105. The examiner can normally be reached on Mon-Fri, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The **FAX** number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1866-217-9197 (toll-free).



NB

March 6<sup>th</sup>, 2007

  
RETTA YEHDEGA  
PRIMARY EXAMINER